IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 7525 of 2004(U)

0S.190/2002 of MUNSIFF COURT,ALUVA
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PETITIONERS:
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1. K.A.CHANDRASEKHARA MENON, C GARDENS, THOTTAKKATTUKARA, N.H.ROAD, ALUVA 683 108 REP. BY POWER OF ATTORNEY HOLDER K.C.BALAGOPAL, S/O.K.A.CHANDRASEKHARA MENON, DO. DO.

2. K.C.BALAGOPAL, S/O.K.A.CHANDRASEKHARA MENON, C GARDENS, THOTTAKKATTUKARA, N.H.ROAD, ALUVA 683 108.

BY ADV. SRI.T.N.MANOJ

RESPONDENTS:
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1. THE STATE OF KERALA, REP. BY THE DISTRICT COLLECTOR, ERNAKULAM.

2. THE SPECIAL TAHSILDAR(LA) NATIONAL HIGHWAY, NATIONAL HIGHWAY, NO.3, VYTTILA.

3. THE ASSISTANT EXECUTIVE ENGINEER, KERALA PUBLIC SERVICE DEPARTMENT(NATIONAL HIGHWAY) NATIONAL HIGHWAY SUB DIVISIONAL OFFICE, ALUVA.

4. NATIONAL HIGHWAY AUTHORITY OF INDIA, REP. BY THE PROJECT DIRECTOR, NATIONAL HIGHWAY AUTHORITY OF INDIA, SIVA TEMPLE ROAD, ALUVA.

5. M/S.TECHNI BHARATI, REP. BY ITS SITE IN CHARGE AND PRINCIAL OFFICER, SRI.JOSEPH ANTONY, TECHNIBHARATI, O/O.NATIONAL HIGHWAY AUTHORITY OF INDIA, SIVA TEMPLE ROAD, ALUVA.

BY ADV. SRI.THOMAS ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 7525 OF 2004

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT IN OS NO.190 OF 2002.

EXT.P2 : TRUE COPY OF THE ORDER DT.8.4.02 IN IA NO.733/02 IN OS NO.190/02, MUNSIFF COURT, ALUVA.

EXT.P3 : TRUE COPY OF THE REPORT DT.4.6.02 SUBMITTED BY M.T.SUDHEELA, ADVOCATE COMMISSIONER.

EXT.P4 : TRUE COY OF THE ORDER DT.5.6.02 IN IA NO.733/02 IN OS NO.190/02.

EXT.P5 : TRUE COPY OF THE JUDGMENT DT.13.11.03 IN OP NO.16770 OF 2001.

EXT.P6 : TRUE COPY OF THE ORDER DT.13.11.03 PASSED IN RP NO.291/02.

EXT.P7 : TRUE COPY OF THE ORDER DT.13.11.03 IN IA NO.4567/03 IN RP NO.291/02 IN OP NO.16770/01.

EXT.P8 : TRUE COPY OF THE REPORT DT.20.11.03 SUBMITTED BY ADVOCATE COMMISSIONER SMT.M.T.SUDHEELA.

EXT.P9 : TRUE COPY OF THE MEMO DT.15.11.03 FILED BY ADVOCATE M.REMA MENON IN OS NO.190/02.

EXT.P10 : TRUE COPY OF IA NO.2236/03 FILED IN OS NO.190/02.

EXT.P11 : TRUE COPY OF IA NO.2237/03 IN OS NO.190/02.

EXT.P12 : TRUE COPY OF IA NO.162/04 DT.12.1.04.

EXT.P13 : TRUE COPY OF THE OBJECTION FILED BY THE 3RD RESPONDENT IN IA NO.2236/03 DT.1.12.03.

EXT.P14 : TRUE COPY OF THE COUNTER AFFIDAVIT DT.2.1.04 FILED BY THE 4TH RESPONDENT IN IA NO.2236/03.

EXT.P15 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 4TH RESPONDENT IN IA NO.2237/03 DT.2.1.04.

EXT.P16 : TRUE COPY OF THE ORDER DT.24.1.04 PASSED IN IA NO.2236/03, THE PETITION FOR AMENDMENT.

EXT.P17 : TRUE COPY OF THE ORDER DT.24.1.04 PASSED IN IA NO.2237/03.

PIUS C. KURIAKOSE, J.

W.P.(C). NO. 7525 OF 2004

Dated this the 19th day of June, 2007

J U D G M E N T

Under challenge in this writ petition under Article 227 of the Constitution is Ext.P16 order of the learned Munsiff, by which an application for amendment of plaint has been dismissed. Ext.P17 order is also under challenge. By Ext.P17, the petitioners' application for permission to enclose the property in question by barbed wire fencing has been dismissed. Petitioners are the plaintiffs in the suit. The respondents are respectively (1) The State of Kerala, (2) The Special Tahsildar (LA), National Highway (3) The Assistant Executive Engineer, National Highway (4) National Highway Authority of India (5) Techni Bharati contractors of M/s. National Highway Authorities of India.

2. Petitioners allege that they purchased the suit property in O.S. 190/02 having an extent of 68.65 cents in 1979 from persons who were in possession of the same for more than 40 years prior to that. In March 2001, officers from the office of respondents 2 and 3 measured out a small strip of land along the eastern boundary of the plaintiffs' property stating that this will be required for the eastern shoulder of the National Highway by the side of which the property is situated. On 29.5.01, public notice was issued by the 3rd respondent in an evening daily by name 'Pouran' notifying the petitioners eastern compound wall to be sold in auction. According to

the petitioners, no notice was issued to them under the Land Acquisition Act or under the Land Conservancy Act. Therefore, 1st petitioner filed O.P. 16770/01challenging the said notification. This court granted an interim stay of auction. The order of stay was extended by this court on 27.6.01 until further orders. In December 2001, the 3rd respondent filed counter affidavit in O.P. 16770/01 alleging inter alia that there is no puramboke inside the compound wall of the petitioners. Therefore after issuing notice under Section 80 of CPC, O.S. 190/02 was filed for injunction. On 8.4.02, learned Munsiff considering I.A. 733/02 for interim prohibitory Injunction, passed an order restraining the respondents from committing waste in the plaint scheduled property until further orders. On 2.4.02, O.P. 16770/01 was disposed of by this court directing the 3rd respondent to consider Ext.P6 representation in that case and dispose of the same, with notice to the 1st petitioner. Ext.P5 is the judgment in that O.P. On 12.4.02, the 1st petitioner filed R.P. 291/02 seeking review of Ext.P5. The R.P. was admitted and stay of implementation of any action taken by the 3rd respondent was granted. On 31.5.02, I.A.733/2002 was heard by the learned Munsiff and on 5.6.02 orders were passed restraining the respondents from tress passing into the property having an extent of 68.65 Ares of land in Sy. No.295/19 or interfering with peaceful possession of the same by the petitioners. Petitioners preferred C.M.Appeal No.51/02 before the District Court, North Paravoor since, according to them, there was

some ambiguity in I.A. 733/02. C.M.Appeal is pointed out is pending. Order of status quo has been continuing for one and a half years. On 1.11.03, an application was filed by the respondents seeking modification of the order in I.A. 733/02. That application was heard on 12.11.03 and reserved for orders on 17.11.03. In the meanwhile, on 13.11.03, R.P. 291/03 was allowed, Ext.P6 judgment was recalled and the petitioners were permitted to raise all the issues in the ongoing suit.

3. Petitioners complain that on 14.11.03, their brother was illegally taken into custody by the Police and later released from police station without charging them of any offence. The 2nd petitioner was threatened and assaulted. I.A. Nos. 2171 to 2174 of 2003 was filed by the petitioners seeking advancement of the case, for an order for maintenance of status quo and for production of all documents. But those petitions could not be moved since the learned Munsiff was on leave. On 15.11.03, learned Munsiff passed an order in I.A. 2172/03 directing that respondents shall not tress pass upon any portion of the plaint schedule property. Adv. M.T.Susheela was appointed as Commission. On 15.11.03, Advocate Commissioner, Smt. Susheela inspected the property about 4.30 p.m. On the same day learned Government Pleader filed a memo in the court stating that she was informed over telephone that the land has been handed over to the National Highway on 14.11.03 itself. Therefore, on 22.11.03, petitioners filed I.A. 2222/03 seeking inpleadment of respondents

4 and 5 and I.A. 2220/03, a petition for prohibitory injunction and I.A. 2236/03 an amendment application and I.A. 2237/03 a petition for putting up temporary barbed wire fencing for protecting the plaint scheduled property. Impleadment petition was allowed. The amendment petition as also the petition for putting up barbed wire fence was dismissed. Ext.P16 is the order dismissing the amendment application and Ext.P17 is the order dismissing the application for putting up temporary barbed wire fencing.

4. The prayer in this writ petition under Article 227 of the Constitution of India is to quash Ext.P16 and P17 and to allow the applications on which those orders have been passed. Another prayer in the writ petition is to direct the learned Munsiff to expedite the trial for disposal of the suit.

5. I have heard the submissions of Sri. Dinesh R. Shenoy, learned counsel for the petitioners, Sri. Shyson D. Manguzha learned Government Pleader and Sri. Thomas Antony Kallampilli, learned Standing Counsel for National Highway authorities.

6. Making very strenuous submissions before me, Mr. Shenoy would assail both Exts.P16 and P17. Counsel for the respondents per contra would justify both the orders.

7. As already stated, Ext.P16 is an order by which an application for amendment has been dismissed. Having examined Ext.P16 in the light of relevant statutory provisions, namely Order XVI Rule 17 CPC, and

various judicial precedents governing the exercise of power for amendment of pleadings, I am of the view that the Munsiff was not justified in dismissing the application for amendment. No legal prejudice will be occasioned to the respondents if the amendment application was allowed.

8. I set aside Ext.P16 and allow the application for amendment. The court below will permit the respondents to raise additional pleadings on the basis of the amended plaint.

9. However, the challenge against Ext.P17 is liable to be repelled. Obviously the property in question has now become part of the National Highway and is lying as Highway. Permitting the petitioners to put up barbed wire fencing even before the issues in the suit are adjudicated is likely to disrupt free movement of traffic on the highway. So challenge against Ext.P17 is therefore repelled. It cannot be said that Ext.P17 is so wholly unreasonable as to warrant interference under article 227 of the Constitution.

The writ petition stands allowed to the above limited extent.

PIUS C. KURIAKOSE, JUDGE

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